

EXHIBIT 40

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

COMMONWEALTH OF
MASSACHUSETTS, et al.,

Plaintiffs,

Civil Action No. _____

v.

NATIONAL INSTITUTES OF HEALTH; et
al.,

Defendants.

Declaration of Leslie Anne Brunelli

I, Leslie Anne Brunelli, hereby declare:

1. I am a resident of the State of Washington. I am over the age of 18 and have personal knowledge of all the facts stated herein, except to those matters stated upon information and belief; as to those matters, I believe them to be true. If called as a witness, I could and would testify competently to the matters set forth below.
2. I am currently employed by Washington State University (WSU) as Executive Vice President for Finance and Administration and Chief Financial Officer. In my role, I am responsible for the financial management, planning and budgeting activities of the Washington State University, including oversight of post award administration and federal cash management.
3. I am providing this declaration to explain certain impacts of NIH Notice Number NOT-OD-25-068, *Supplemental Guidance to the 2024 NIH Grants Policy Statement: Indirect Cost Rates*, which appears to immediately reduce indirect costs payments to 15%.
4. The National Institutes of Health (NIH) are a major source of federal funds at WSU. WSU was awarded approximately \$44 million by the NIH (including flowthrough) in FY24,

making up 66% of awards from the Department of Health and Human Services (HHS) in FY24 and over 13% of all external award funds and 17.7% of all federal funding. Currently, there are 134 active grants from NIH to 98 principal investigators (PIs) at WSU with a total remaining value of \$52,420,589.

5. These grants fund critical applied and foundational research in the health sciences—including in addiction and substance use, health service delivery in rural and other underserved areas, pain management, Alzheimer’s disease, cancers, and nutrition—as well as providing for the training of the next generation of researchers and clinicians.
6. Typically, NIH grants awarded to WSU do not include “direct” cost items for institutional costs like facilities (including utilities and maintenance), administrative staff, and other WSU resources. In essence, the NIH grant direct costs WSU receives cover only the actual research WSU is tasked to perform; the indirect cost portions of their awards cover the infrastructure costs WSU incurs to perform the research under the grant, such as laboratory and building maintenance and upkeep, data processing, library subscriptions, security, human and animal participant protections, lab safety equipment, hazardous waste disposal, information technology costs, ethics review board costs, grant administration, and compliance costs.
7. WSU is only able to conduct the research provided for under the NIH grants because the “indirect” costs provide a reliable set of funds for the duration of the grant to cover these additional expenses. Coverage of these indirect costs are critical to WSU’s ability to effectively conduct research in conjunction with the federal government.
8. WSU does not, and cannot, “profit” off of these indirect costs paid by the federal government. These costs cover only expenses incurred by research activities, and **do not even fully reimburse the expenses that result from providing necessary infrastructure**

and support to conduct research activities. Additionally, these costs are *only* based on funded research space and related research activities. Accordingly, WSU's indirect costs are carefully calculated, and WSU takes great pains to ensure their accuracy when transmitting them to the federal government. WSU's indirect costs are arrived at after yearslong surveys of WSU's available resources and research-related costs.

9. WSU has a Negotiated Indirect Cost Rate Agreement ("NICRA") with NIH, effective as of July 1, 2019. The Indirect Cost ("IDC") Rate in WSU's NICRA is 53% for on-campus research, and 26% for off-campus research. WSU's total blended IDC rate for NIH funding is 30.44%.
10. WSU relied on these longstanding negotiated rates when building out its facilities, budgeting for research projects, deciding on which and how many students to admit and faculty/staff to employ, and deciding how to prioritize its own institution-wide funding allocations. NIH's sudden, overnight change of these agreements that have been in place for years would send shockwaves throughout WSU and significantly disrupt the substantial progress WSU has made to better serve its students and its community as a research institution.
11. With the NIH indirect cost percentage capped at 15%, WSU projects it will receive \$1,592,199 less in the remainder of state FY25, or \$412,840 monthly. Annualized, this would total an estimated \$4,954,084 of lost revenue for facilities and administration. These projections take into account only direct awards from NIH, excluding passthrough awards where NIH is the prime sponsor. The actual total losses are therefore much greater.
12. For FY 2026, NIH's reduction of WSU'S IDC rates will eliminate approximately \$5,118,961 in funding that WSU uses to support its research programs.

13. The loss of these funds will immediately impact WSU'S ability to draw critical funds used to pay expenses associated with several of its component schools and campuses. WSU does not have the funds available to cover the immediate loss of millions of dollars in indirects from its research grant budget.
14. Certain WSU departments, such as the Office of the Campus Veterinarian (the “Office”), which supports nearly all projects WSU’s large animal-based research portfolio (and all of its veterinary services), are almost wholly dependent on these indirect costs to stay afloat, as costs associated cannot be charged back as direct costs. The indirect costs are also used to ensure regulatory compliance, such as the 404 approved animal use protocols and 155 PIs that must be used in any proposed research. They cover training faculty and staff on compliance and animal care, proper animal handling, vaccination and respiratory administration, and other mandates required by federal and state law. These costs are not passed on to the researchers, but are necessary to proceed with any animal research.
15. Similarly, cuts to NIH’s indirect costs would devastate WSU’s College of Veterinary Medicine (CVM), where NIH funding accounts for 30% of CVM’s research portfolio. This percentage equates to just under \$15 million in annual research expenditures and supports a range of areas important for societal health and wellbeing including reproductive health, substance abuse and addiction, infectious disease, among many others. The indirect costs from NIH grants support nearly all aspects of biomedical research in CVM including students, animal costs, equipment support, and staff. In addition, indirect costs provide the vast majority of funding for CVM’s strategic research fund, which is used for rejuvenating essential equipment, seed grants to spur innovation and collaboration, and bridge funding for faculty. Reduction in indirect rates will devastate the biomedical research enterprise in CVM,

severely hamstringing CVM's faculty and crippling ongoing research. Facilities like the Washington Animal Disease Diagnostic Laboratory (WADDL) the only accredited veterinary medical laboratory within Washington, would be hamstrung in their ability to detect, research, and conduct responses to current and future disease outbreaks such as the current highly pathogenic avian influenza (HPAI) virus, rabies, tularemia, and the plague.

16. Without funds for animal care through the Office of the Campus Veterinarian, combined with the loss of indirects for the research projects themselves within CVM, research animal colonies will have to be severely reduced or eliminated. The loss of life would be massive: in 2023, WSU accounted for use of 90,000 animals of which 50% were fish and 39% were mice. The remaining 11% include amphibians, reptiles, birds and other mammals. The results would be horrific. Animals such as mice with short life spans will "age out" or the cost of holding them until they can be used would be too expensive. WSU cares for valuable gene-edited strains of cattle, rodents and fish which are irreplaceable, and elimination of animal colonies will take potentially years to replace even the ones that are capable of replacement.
17. Even if some funding could be later restored, the massive loss of animal life cannot be easily replaced, and some projects are unlikely to restart. Moreover, the loss of the animal population would require layoffs of professional animal care and veterinary staff that are nearly impossible to replace, given the current disparity in opportunities in veterinary medicine that are available in the private sector. Moreover, reducing staff to a bare minimum will increase risk of safety violations and noncompliance with federal and state animal care requirements, further endangering WSU to liability and financial impositions it cannot afford to incur. The staff reduction would also severely hinder WSU's extension activities in its local communities, such as its safe food initiatives and its support of statewide disease

surveillance and detection efforts – a concern of immense and immediate consequence, as our facilities regularly test eggs, poultry, and milk for diseases like avian influenza.

18. If the NIH proceeds with its indirect cost guidance, the reduced coverage would also likely force WSU to close some of its other research facilities, like the Spokane vivarium and the analytical core services that support our biomedical, drug discovery, and drug delivery programs, including some high impact cancer research. WSU would lose faculty, postdocs and graduate students. WSU would essentially have to eliminate all of the research support services at WSU Spokane and would have to downsize its research facilities statewide, making it difficult to impossible to retain and recruit research-active faculty. It would also greatly impact WSU's IT services that support human subjects research across all campuses.
19. Certain WSU-sponsored research laboratories would be in serious danger of closing. For example, WSU is home to the only Biosafety Level 3 laboratory available for public health use in Washington east of Seattle. This lab does critical infectious disease research and was called on to serve eastern and central Washington during the COVID-19 outbreak and currently provides the facilities needed for critical avian influenza research. Without indirect cost elements of NIH research grants to support the maintenance and continual upgrade of the laboratory, this capability to serve the state and nation would be lost. As our country sees cases of avian flu (including mutations) rising nationwide, this continued research will be critical in avoiding another viral pandemic.
20. Capping the indirect costs 15% would also decimate WSU's Medical School, the Elson S. Floyd College of Medicine relies heavily on NIH funding. It is difficult to overestimate the immediate impact this would have on the College, resulting in substantial impact across most departments and programs (such as Team Mentoring Program, Community and Behavioral

Health, Nutrition and Exercise Physiology, Speech and Hearing Sciences, and many more) that would likely incur:

- Devastating faculty, staff, and post-graduate position reductions;
- Closure of specific research programs, such as our community-based human subjects research in the Promoting Research Initiatives in Substance Use and Mental Health Collaborative (PRISM), the Institute for Research and Education to Advance Community Health (IREACH), and those within our Sleep and Performance Research Laboratory;
- Patient care clinical service loss, including elimination or clinical trials for potential life-saving care, especially for vulnerable populations;
- Substantial research infrastructure reductions to support remaining faculty;
- Loss of mentorship for junior faculty for appropriate faculty development, hindering WSU's ability to provide effective education to its medical students and the next generation of doctors;
- Faculty reduction jeopardizing WSU's ability to provide accreditation-required mentors for student research; and
- Potential adverse accreditation determination impact (e.g., probation) for insufficient research, among others.

21. WSU's College of Nursing would also be in serious jeopardy of serious downsizing or potentially shuttering, as it is heavily dependent on indirect funds to support its library fees, access to journals that support our grants applications, IT support (which ensures regulated data is secure), faculty recruitment and retention (a serious challenge in the current

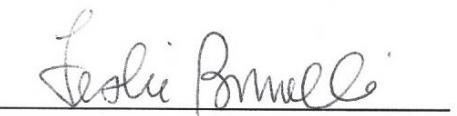
environment), and our research-related services, essential to conducting research with human subjects ethically.

22. With the mass loss of facilities, employees, and staff that will result from NIH's guidance, WSU would be functionally unable to proceed with many of the life-saving research projects that are currently the subject of NIH's various grants, like the College of Pharmacy and Pharmaceutical Sciences' research into carcinogen interactions and lung cancer risk, the College of Medicine's research into childhood obesity and alcoholism, the College of Arts and Sciences' research into pediatric pain, anxiety disorders, and prostate cancer; and the College of Veterinary Medicine's research into the neurogenetic causes of obesity and sterility.
23. While any disruption to this critical research will ultimately hinder delivery of lifesaving services in the months and years to come, the impacts of NIH's guidance are in many cases much more immediate. For instance, one ongoing NIH-funded study in the College of Art and Sciences deals with the Sharma Lab's Targeted Nanotherapies for the Treatment of Prostate Cancer (NIH NIC R21 CA286235), and focuses on developing a novel treatment of advanced prostate cancer. If the study is not completed, this novel form of cancer therapy will not be investigated and developed into a drug to help treat the second leading cause of cancer-related deaths among men in the U.S. Importantly, the Sharma lab has already developed nanotherapeutics and is actively testing them on prostate cancer cells and organoids. This is time-sensitive work, and any disruption would result in immediate and potentially irreplaceable data loss on these active tests, which would delay and could ultimately eliminate the viability of the treatment they are researching.

24. WSU regularly draws down funds per the allowable grant terms, including its indirect costs, for its NIH (and other federal agencies) projects, and anticipates making its next draw on our regular cycle on February 12, 2025. WSU sincerely hopes it will be able to collect indirect costs at the rate it negotiated years ago to avoid the immediate devastation the NIH's guidance would have on the institution, its people, and the animals in its care if it remains in effect.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 9 day of February 2025, in Spokane, WA.



LESLIE ANNE BRUNELLI
Executive Vice President for Finance and
Administration and Chief Financial Officer
Washington State University